

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

DOUGLAS HANDSHOE

PLAINTIFF

VS.

CIVIL ACTION NO. 1:15cv382HSO-JCG

VAUGHN PERRET, CHARLES LEARY &  
DANIEL ABEL, D/B/A TROUT  
POINT LODGE LTD OF NOVA SCOTIA  
& IN THEIR INDIVIDUAL CAPACITIES,  
PROGRESS MEDIA GROUP LIMITED,  
MARILYN SMULDERS, & ASHOKA

DEFENDANTS

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**DEFENDANTS PERRET & LEARY'S MOTION TO  
STRIKE PLAINTIFF'S RESPONSE IN OPPOSITION**

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COME NOW Defendants **Vaughn Perret** and **Charles Leary**, by and through their counsel, Purvis & Co. PLLC, respectfully request that this Court strike the Plaintiff's Response in Opposition to Vaughn Perret and Charles Leary's Motion to Dismiss [#111] filed by Douglas Handshoe pursuant to Fed.R.Civ.P.7(b)(4).

1. On February 15, 2017, Defendants, Vaughn Perret and Charles Leary, filed their Motion to Dismiss Third Amended Complaint "with the Clerk of the Court via the CM/ECF electronic document filing system...." See Defendants' Motion to Dismiss [#96], page 4.
2. Pursuant to L.U.Civ.R.7(b)(4), Handshoe was required to file his response and memorandum in support "within fourteen days after service of the movant's motion and memorandum brief," or not later than March 1, 2017; Handshoe did not file a response on March 1, 2017.
3. On March 6, 2017, nineteen (19) days after the Defendants filed their motion, Plaintiff Douglas K. Handshoe filed his Response in Opposition to Defendants' Motion to Dismiss [#111].

4. On March 10, 2017, proposed Plaintiff-in-intervention, and Handshoe's sole-proprietorship LLC, Slabbed New Media, filed its Memorandum of Law in Reply to Defendants' Response in Opposition, and Handshoe, speaking under the guise of Slabbed, "suggest[ed] the defendants consult Rule 6D for guidance" on Handshoe's failure to timely file a response in opposition—suggesting Handshoe was allowed an additional 3 days to serve his Response. *See* Slabbed's Memorandum of Law in Reply [#114], page 2, footnote 1.
5. Defendants would remind Handshoe of Pro Se (Non-prisoner) Consent and Registration Form to Receive Documents Electronically [#2], which he signed and filed with the Court on November 16, 2016, in order to serve and receive documents through the court's transmission facilities by electronic means, pursuant to Fed.R.Civ.P. 5(b), Fed.R.Civ.P. 77(d), L.U.Civ.R. 5(c) and the Court's Administrative Procedures for Electronic Case Filing.
6. Defendants served their Motion to Dismiss via the CM/ECF electronic document filing system service, which provided service on the ECF registered Handshoe, and does not qualify under Fed.R.Civ.P. 6(d) as service "made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to)"; thus, Handshoe was not entitled to an additional 3 days to file his response.
7. Based on the foregoing, Handshoe did not file his response in opposition within fourteen days; Handshoe was not entitled to an additional 3 days to file his response in opposition; and, therefore, his Response in Opposition is due to be stricken.

WHEREFORE, Defendants Perret and Leary pray that the Court will strike Plaintiff's Response in Opposition to their Motion to Dismiss. Said Defendants also request any further, general, or specific relief as this Court may deem appropriate.

RESPECTFULLY SUBMITTED, this the 14<sup>th</sup> day of March, 2017.

VAUGHN PERRET, DEFENDANT  
and

CHARLES LEARY, DEFENDANT

BY: PURVIS & CO. PLLC

BY: /s/ Jason B. Purvis  
Jason B. Purvis, MSB # 100873

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**CERTIFICATE OF SERVICE**

I hereby certify that, on March 14, 2017, I caused a true and correct copy of the above and foregoing to be filed utilizing the Court's CM/ECF electronic document filing system, which caused notice of such filing to be delivered to all counsel of record and parties requesting notice, and by United States First Class Mail, postage prepaid, to the following non-ECF participants having appeared in this action:

[none]

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*/s/ Jason B. Purvis*